IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 1265

HUGH GALLAGHER and WARD CANFIELD, individually and as Commissioners of the Civil Service Commission of the City of Minneapolis, ET AL.,

Petitioners,

v.

GERALD CARTER, WILLIE HARRIS, HERBERT HILL, III, BENJAMIN E. MCHIE, and WARD K. MITCHELL, on behalf of themselves and all other persons similarly situated,

and

MINNEAPOLIS COMMISSION ON HUMAN RELATIONS,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE

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May 5, 1972

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The International Association of Fire Fighters (IAFF) hereby respectfully moves for leave to file the attached brief *amicus curiae* in this case. The consent of the attorneys for the petitioner and for the individual respondents has been obtained. The consent of the

attorney for the respondent Minneapolis Commission on Human Relations was requested but refused.

The interest of the IAFF in this case arises from the fact that it is an international labor organization of which approximately 142,000 fire fighters performing their duties in more than 1,400 municipalities throughout the Nation, including those fire fighters employed by the City of Minneapolis, are members.

In the instant case, the petitioner quite properly argues with respect to the validity of the laws and regulations applicable to fire fighters employed by the City of Minneapolis. In supporting the position of petitioner the IAFF desires to inform the Court of the importance of the questions presented to members of IAFF generally, and the inhabitants of municipalities for whom they perform fire fighting duties. The interest of the IAFF and its members in the questions presented shows that the judgment below will have a substantial adverse effect upon the safety and welfare of fire fighters generally and the citizenry of the Nation as a whole.

Respectfully submitted,

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BRIEF AMICUS CURIAE FOR INTERNATIONAL ASSOCIATON OF FIRE FIGHTERS

INTEREST OF AMICUS CURIAE

The International Association of Fire Fighters (IAFF) was organized under the jurisdiction of the American Federation of Labor on February 18, 1918.

Its membership is comprised of approximately 142,000 fire fighters who are also members of more than 1,400 local unions affiliated with the IAFF.

Approximately ninety-seven per cent (97%) of the members of IAFF are employed by municipalities within the various states of the Union, and other members are employed by federal agencies and industries. Most of the municipalities employing fire fighters have promulgated civil service regulations and other laws that relate to the employment of fire fighters and their working conditions. Qualification for employment as a municipal fire fighter usually requires the passing of a competitive civil service examination. Within the knowledge of the present officers of the IAFF such examinations have been validated, or have been otherwise shown to be "job related", in the judicial context of such terms as articulated in civil rights disputes.

The experience of the IAFF and its members demonstrates that successful fire fighting requires the unqualified effort of all fire fighters working as a team. In the performance of his job, the fire fighter is an integral part of a unit, the fire company. The successful performance of his duties requires the continued development of particular skills, and the acquisition and accumulation of knowledge of fire fighting procedures. Failure on the part of one fire fighter to perform his duties in the most competent manner serves not only to jeopardize his safety, the safety of his co-workers, but the property and lives of the citizenry whom the fire fighter seeks to serve.

ARGUMENT

The requirement of the *en banc* decree below is to prefer minority applicants for employment over other applicants solely because of their minority status by reason of race, color or cultural background. While the judgment recognizes that eligible applicants must have passed the required competitive examination for employment, it will require that the order of employment provide priority for one minority applicant of each three applicants employed. Such procedure prohibits the continued implementation of civil service regulations which provide for priority of employment on the basis of the score attained in competitive examination.

It is the position of the IAFF that the judgment below grants an unlawful preference to the minority applicants which will have the effect of requiring employment of those applicants demonstrably not as competent as other applicants to perform the duties of fire fighters. Such preference is to be given despite general recognition that the best qualified applicant can be expected to be the most qualified fire fighter to protect the interests of his co-workers, and to more efficiently serve the needs of the citizenry of the communities served.

The question whether qualifications of fire fighters in the performance of their duties can lawfully be depreciated solely for the purpose of granting employment to minority applicants is a substantial question affecting the safety and welfare of the citizenry of the Nation, including fire fighters and their families, and a question which should be reviewed by the Court.

CONCLUSION

For these reasons and those set forth in the petition filed herein a writ of certiorari should issue to review the judgment and opinion of the Eighth Circuit.

Respectfully submitted,

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